

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

AVISTUS FOBATE,

Plaintiff,

Case No. 2:22-cv-01948-ART-VCF

ORDER

v.

R.J. SMITH, *et al.*,

Defendants.

I. DISCUSSION

Plaintiff Avistus Fobate (“Plaintiff”), who is incarcerated in the custody of the Nevada Department of Corrections (“NDOC”), has filed a Motion for the Court to Issue a Rule 45 Subpoena Duces Tecum¹ to the NDOC’s Employee Custodian of Records. (ECF No. 12.) Plaintiff is seeking the names and addresses of two correctional employees who worked at High Desert State Prison (“HDSP”) on October 5, 2020, between the hours of 5:00 p.m. and 7:00 p.m. in Unit 8C-D. (*Id.* at 3.) The Court grants Plaintiff’s Motion for the Court to Issue a Rule 45 Subpoena Duces Tecum (ECF No. 12) and directs the Office of the Attorney General of the State of Nevada (“Attorney General’s Office”) to file a notice advising the Court and Plaintiff whether it accepts service of the subpoena on or before **July 25, 2023**. If the Attorney General’s Office accepts service, it shall respond to Plaintiff’s subpoena within **30 days** of the entry of its notice accepting service. Once the answer to Plaintiff’s subpoena is filed, Plaintiff must file a second amended complaint with the names of those Plaintiff attempted to identify as defendants, or, in the alternative, Plaintiff must move to substitute the true names of the Doe defendants currently listed in the first amended complaint. (ECF No. 11.) Plaintiff must do either of these proposed actions within **30 days** of receiving the response to his subpoena.

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¹ In the screening order, the Court instructed Plaintiff that he could file a Rule 45 subpoena duces tecum to attempt to identify two John Does. (ECF No. 10 at 7-8.)

II. CONCLUSION

For the foregoing reasons, it is ordered that Plaintiff's Motion for the Court to Issue a Rule 45 Subpoena Duces Tecum to the NDOC's Employee Custodian of Records (ECF No. 12) is granted.

It is further ordered that the Clerk of Court shall issue the Subpoena that Plaintiff included in his Motion for the Court to Issue a Rule 45 Subpoena Duces Tecum (*Id.* at 3-5).

It is further ordered that the Clerk of Court shall add the NDOC to the docket as an Interested Party and electronically serve a copy of this order and a copy of Plaintiff's Subpoena Duces Tecum on the Attorney General's Office by adding it to the docket sheet. This does not indicate acceptance of service.

It is further ordered that, on or before **July 25, 2023**, the Attorney General's Office shall file a notice advising the Court and Plaintiff whether it accepts service of the Subpoena Duces Tecum on behalf of the Employee Custodian of Records.

It is further ordered that if the Attorney General's Office accepts service of Plaintiff's subpoena (ECF No. 12), it shall respond to Plaintiff's subpoena within **30 days** of the entry of its notice accepting service.

It is further ordered that Plaintiff, within **30 days** of receiving the answer to his subpoena, must either file a second amended complaint with the names of those Plaintiff attempted to identify as defendants, or, in the alternative, Plaintiff must move to substitute the true names of the Doe defendants currently listed in the first amended complaint.

DATED THIS 17th day of July 2023.

Carla S. Stach
UNITED STATES MAGISTRATE JUDGE